

EXHIBIT D

DOUG BANIA
SMARTMATIC USA V. LINDELL

August 09, 2024

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| <p>1 IN THE UNITED STATES DISTRICT COURT FOR</p> <p>2 THE DISTRICT OF MINNESOTA</p> <p>3</p> <p>4</p> <p>5 _____</p> <p>6)</p> <p>6 SMARTMATIC USA CORP.,)</p> <p>SMARTMATIC INTERNATIONAL)</p> <p>7 HOLDING B.V. and SGO)</p> <p>CORPORATION LIMITED,)</p> <p>8) Case No.</p> <p>9) 22-cv-00098-WMW-JFD</p> <p>9 Plaintiffs,)</p> <p>10)</p> <p>10 vs.)</p> <p>11)</p> <p>11 MICHAEL J. LINDELL and)</p> <p>MY PILLOW, INC.,)</p> <p>12)</p> <p>12)</p> <p>13 Defendants.)</p> <p>14 _____</p> <p>15</p> <p>16 DEPOSITION OF DOUG BANIA</p> <p>17 CONDUCTED REMOTELY</p> <p>18 AUGUST 9, 2024</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 REPORTED BY KAYLEE G. WOOD, RPR, CRR, CSR NO. 14348</p> <p>24</p> <p>25</p> | <p>1 APPEARANCES</p> <p>2 FOR THE PLAINTIFFS:</p> <p>3 BENESCH FRIEDLANDER COPLAN & ARONOFF LLP</p> <p>BY: MAURA LEVINE-PATTON, ESQ.</p> <p>4 WILLIAM WALSH, ESQ.</p> <p>71 SOUTH WACKER DRIVE, SUITE 1600</p> <p>5 CHICAGO, IL 60606</p> <p>(312) 212-4949</p> <p>6 MLEVINE-PATTON@BENESCHLAW.COM</p> <p>WWALSH@BENESCHLAW.COM</p> <p>7</p> <p>8 FOR THE DEFENDANTS:</p> <p>9 MCSWEENEY CYNKAR & KACHOUROFF PLLC</p> <p>BY: CHRISTOPHER KACHOUROFF, ESQ.</p> <p>10 13649 OFFICE PLACE, SUITE 101</p> <p>WOODBIDGE, VA 22192</p> <p>11 (703) 621-3300</p> <p>CHRIS@MCK-LAWYERS.COM</p> <p>12</p> <p>13 ALSO PRESENT:</p> <p>14 DANA BACHMANN, VIDEOGRAPHER</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |
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| <p>1 IN THE UNITED STATES DISTRICT COURT FOR</p> <p>2 THE DISTRICT OF MINNESOTA</p> <p>3</p> <p>4</p> <p>5 _____</p> <p>6)</p> <p>6 SMARTMATIC USA CORP.,)</p> <p>SMARTMATIC INTERNATIONAL)</p> <p>7 HOLDING B.V. and SGO)</p> <p>CORPORATION LIMITED,)</p> <p>8) Case No.</p> <p>9) 22-cv-00098-WMW-JFD</p> <p>9 Plaintiffs,)</p> <p>10)</p> <p>10 vs.)</p> <p>11)</p> <p>11 MICHAEL J. LINDELL and)</p> <p>MY PILLOW, INC.,)</p> <p>12)</p> <p>12)</p> <p>13 Defendants.)</p> <p>14 _____</p> <p>15 VIDEO RECORDED DEPOSITION OF DOUG BANIA,</p> <p>16 commencing at the hour of 10:01 a.m. PST, Friday,</p> <p>17 August 9, 2024, conducted remotely, before Kaylee G.</p> <p>18 Wood, Certified Shorthand Reporter, Registered</p> <p>19 Professional Reporter, and Certified Realtime Reporter</p> <p>20 in and for the State of California.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p>1 I N D E X</p> <p>2</p> <p>3 WITNESS: DOUG BANIA</p> <p>4</p> <p>5 EXAMINATION PAGE</p> <p>6 BY MR. KACHOUROFF 6</p> <p>7</p> <p>8</p> <p>9</p> <p>10 E X H I B I T S</p> <p>11</p> <p>12 RETAINED BY COUNSEL PAGE</p> <p>13 Exhibit 710 Mr. Bania's Report 7</p> <p>14 Exhibit 711 Mr. Bania's Rebuttal Report 7</p> <p>15 Exhibit 712 Article 31</p> <p>16 Exhibit 713 The Hill Article 60</p> <p>17 Exhibit 714 NBC News Article 64</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |

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| <p style="text-align: right;">Page 5</p> <p>1 CONDUCTED REMOTELY; AUGUST 9, 2024; 10:01 A.M. PST</p> <p>2 PROCEEDINGS</p> <p>3 THE VIDEOGRAPHER: Good morning. We're now</p> <p>4 on the record, 10:01 a.m. Pacific Time on August 9,</p> <p>5 2024. This begins the videoconference deposition of</p> <p>6 Doug Bania taken in the matter of Smartmatic USA</p> <p>7 Corporation, et al., versus Michael J. Lindell, et al.,</p> <p>8 filed in the U.S. District Court, District of</p> <p>9 Minnesota, case number 22-CV-00098. My name is Dana</p> <p>10 Bachmann. I'm your videographer today. Our court</p> <p>11 reporter is Kaylee Wood. We're both representing</p> <p>12 Esquire Deposition Solutions. Would all present please</p> <p>13 identify themselves beginning with our noticing</p> <p>14 attorney?</p> <p>15 MR. KACHOUROFF: This is Christopher</p> <p>16 Kachouroff on behalf of Michael Lindell and My Pillow.</p> <p>17 MS. LEVINE-PATTON: Maura Levine-Patton on</p> <p>18 behalf of the Smartmatic plaintiffs and the witness.</p> <p>19 MR. WALSH: Bill Walsh also on behalf of the</p> <p>20 Smartmatic plaintiffs and the witness.</p> <p>21 THE VIDEOGRAPHER: Thank you very much.</p> <p>22 Madam Reporter, would you kindly swear our witness?</p> <p>23 ///</p> <p>24 ///</p> <p>25 ///</p> | <p style="text-align: right;">Page 7</p> <p>1 I'd like to put his Exhibit 1 and 2, his report and</p> <p>2 rebuttal report.</p> <p>3 COURT REPORTER: Dana, are you doing that?</p> <p>4 MR. KACHOUROFF: Say again.</p> <p>5 COURT REPORTER: I was asking the</p> <p>6 videographer if he's handling the exhibits.</p> <p>7 THE VIDEOGRAPHER: I'm sorry, Madam Reporter.</p> <p>8 I could not understand what you were saying.</p> <p>9 COURT REPORTER: Are you doing exhibits</p> <p>10 today?</p> <p>11 THE VIDEOGRAPHER: I hadn't been assigned</p> <p>12 that task but I can.</p> <p>13 COURT REPORTER: However you'd like to do</p> <p>14 that, Mr. Kachouroff.</p> <p>15 MS. LEVINE-PATTON: Chris, can you drop the</p> <p>16 PDFs in the chat?</p> <p>17 MR. KACHOUROFF: Yeah. I'll take care of the</p> <p>18 exhibits, guys.</p> <p>19 (Whereupon, Exhibit 710, Mr. Bania's Report,</p> <p>20 was marked for identification.)</p> <p>21 (Whereupon, Exhibit 711, Mr. Bania's Rebuttal</p> <p>22 Report, was marked for identification.)</p> <p>23 BY MR. KACHOUROFF:</p> <p>24 Q. Mr. Bania, would you just take a look at</p> <p>25 those two and confirm for me that that's your first and</p> |
| <p style="text-align: right;">Page 6</p> <p>1 DOUG BANIA,</p> <p>2 having first been duly sworn, was examined and</p> <p>3 testified as follows:</p> <p>4 EXAMINATION BY COUNSEL FOR THE DEFENDANTS</p> <p>5 BY MR. KACHOUROFF:</p> <p>6 Q. I guess it's good morning for you, Mr. Bania.</p> <p>7 You're in California, I suppose?</p> <p>8 A. Yes, I am. 10 a.m. for me. Thank you.</p> <p>9 Q. Okay. My name is Chris Kachouroff. I</p> <p>10 represent Michael Lindell and My Pillow, and I know</p> <p>11 that you've taken several depositions -- in fact</p> <p>12 approximately 30 -- in the past. Is that fair to say?</p> <p>13 A. Yes. That seems correct.</p> <p>14 Q. I'm going to presume you know the ground</p> <p>15 rules for the depositions, and when your attorneys</p> <p>16 object, et cetera, you're required to let them make</p> <p>17 their objections and otherwise you're to answer my</p> <p>18 questions. Does it sound like the standard rules that</p> <p>19 you've been told the past 30 times?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. I'd like to talk first of all the</p> <p>22 scope of your opinions. I would ask the court</p> <p>23 reporter -- I don't know how we get these things back</p> <p>24 up in the chat. I can put the documents on chat if you</p> <p>25 would like me to so that Mr. Bania can see them, but</p> | <p style="text-align: right;">Page 8</p> <p>1 rebuttal report as well?</p> <p>2 A. Okay. I think -- okay. I downloaded first</p> <p>3 one and the second one. Yes.</p> <p>4 Q. Page 21 of the first report and page 30 of</p> <p>5 the rebuttal report contain your conclusions. Do you</p> <p>6 want to take a quick moment to make sure that I'm being</p> <p>7 accurate?</p> <p>8 A. What was -- I'm sorry. What was the page on</p> <p>9 the --</p> <p>10 Q. Let's start with Exhibit 1, page 21 on</p> <p>11 Exhibit 1.</p> <p>12 A. Yes. Paragraph 55 is where I start my</p> <p>13 conclusions.</p> <p>14 Q. Correct. And that's the scope of the</p> <p>15 opinions that you intend to offer at trial?</p> <p>16 A. Yes, as of right now unless something else</p> <p>17 comes up. But as of this deposition, yes.</p> <p>18 Q. Okay. And then if we look at the rebuttal</p> <p>19 report which would be Exhibit 2, I believe it's page</p> <p>20 30. Actually, I'm sorry. I believe it's page 12 on</p> <p>21 the rebuttal report, not 30, paragraph 30.</p> <p>22 A. Correct. Yes. I'm there.</p> <p>23 Q. And that would also be your opinions that you</p> <p>24 intend to offer at trial?</p> <p>25 A. That's correct.</p> |

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| <p style="text-align: right;">Page 9</p> <p>1 Q. Barring any new things that come to light in 2 your mind? 3 A. That's right. 4 Q. I want to talk briefly about your background 5 and experience. You have a bachelor's degree in cinema 6 and television, is that right? 7 A. My bachelor's degree is in cinema. 8 Q. And then you have a master's in cinema, 9 television, film and new media production? 10 A. My master's is in television, film and new 11 media, yes. 12 Q. And how did that -- how does that relate to 13 your expertise in intellectual property? 14 A. My educational background is not really 15 relevant to my expertise on this case. 16 Q. Your certification and professional license, 17 I think you call it a certified licensing professional? 18 A. Yes. 19 Q. Is that relevant to the matters raised in 20 this case? 21 A. That is -- let me think about that. Not 22 necessarily. I'm not providing any licensing opinions 23 on this case. 24 Q. Do you have an engineering background? 25 A. No.</p> | <p style="text-align: right;">Page 11</p> <p>1 A. Services. 2 Q. You are not portending to be an expert in 3 marketing, are you? 4 A. No. 5 Q. You're not an expert in psychology and 6 behavioral science? 7 A. I am not. 8 Q. Do you have a law degree? 9 A. I do not. 10 Q. Do you have an accounting degree? 11 A. I do not. 12 Q. You don't hold a CPA license, I presume? 13 A. No, I don't. 14 Q. Do you have any certifications in finance? 15 A. I do not. 16 Q. Business valuations? 17 A. The CLP designation includes having 18 experience in valuation. 19 Q. Is the experience in valuation specific to 20 intellectual property? 21 A. Yes. 22 Q. And I believe in your rebuttal report, page 23 4, 6, you said that you have not been asked to provide 24 any valuation on IP. 25 A. What page are you on?</p> |
| <p style="text-align: right;">Page 10</p> <p>1 Q. Marketing background? 2 A. When you say background what type of 3 background are you asking me about? 4 Q. Let me rephrase the question. Do you have 5 expertise in marketing? 6 A. I -- part of my master's degree included 7 marketing classes as my previous career I was in charge 8 of marketing and business development, and now with my 9 current company that I own and founded I do marketing 10 and business development as well. 11 Q. So you would describe your experience as 12 on-the-job training? 13 A. Including, you know, educational courses in 14 my master's degree. 15 Q. What type of marketing did you do in your 16 first company? 17 A. The first company in which I worked for I 18 really wore the marketing hat and business development 19 hat as it relates to marketing, going to events, trade 20 shows, you know, leading into internet and social media 21 marketing, building the website, optimizing each page, 22 and, you know, creating relationships and keeping 23 relationships with clients. 24 Q. What were you marketing, products or 25 services?</p> | <p style="text-align: right;">Page 12</p> <p>1 Q. If we look at page -- 2 A. Or paragraph. 3 Q. I'm sorry, paragraph -- it will be page 4, 4 paragraph 6. You've not been asked to confirm the 5 accuracy of any information provided to you or provide 6 an analysis of valuation opinion of any businesses, 7 intellectual properties, or intangible assets owned by 8 plaintiffs or defendants? 9 A. That's correct. 10 Q. Your website says that you have three 11 offices, San Diego, LA, and D.C. Are these virtual 12 offices? Are they brick and mortar? 13 A. The San Diego office is brick and mortar and 14 the other two are virtual. 15 Q. For 2023 how much expert -- how much revenue 16 did you generate from being an expert witness? 17 A. I don't know. 18 Q. What about 2024? 19 A. I don't know. 20 Q. What percentage of your income comes from 21 expert witness testimony? 22 A. It varies year to year. 60 percent. 23 Q. I'd like to turn to your first report, and 24 specifically I'm looking at -- I'm beginning at page -- 25 let's see.</p> |

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| <p style="text-align: right;">Page 13</p> <p>1 MS. LEVINE-PATTON: I'm sorry, Chris. Just</p> <p>2 for the record what exhibit number is this so we have</p> <p>3 it so that the court reporter can mark it as an</p> <p>4 exhibit?</p> <p>5 MR. KACHOUROFF: I started with 1, and you'll</p> <p>6 see all the exhibits I upload will have a designation</p> <p>7 of 1, 2, 3, 4, 5, or 6.</p> <p>8 MS. LEVINE-PATTON: Okay. I just want to put</p> <p>9 on the record that we may request later that these</p> <p>10 exhibits be renumbered to continue the sequential</p> <p>11 numbering that we have done through over 700 in this</p> <p>12 case up to this point which -- I just want to reserve</p> <p>13 that right on the record.</p> <p>14 MR. KACHOUROFF: Well, let's not have to</p> <p>15 worry about it. Why don't I just change that right</p> <p>16 now?</p> <p>17 MS. LEVINE-PATTON: That would be great.</p> <p>18 MR. KACHOUROFF: One moment. The last</p> <p>19 exhibit number I have is 709.</p> <p>20 MS. LEVINE-PATTON: Yes. I think we're --</p> <p>21 yeah. 710.</p> <p>22 MR. KACHOUROFF: So we'll refer to this</p> <p>23 exhibit, Mr. Bania, your report, as 710, okay?</p> <p>24 MS. LEVINE-PATTON: Thank you so much.</p> <p>25 THE WITNESS: Okay.</p> | <p style="text-align: right;">Page 15</p> <p>1 A. Not off -- no, I don't.</p> <p>2 Q. Did you consider Mr. Lindell's online</p> <p>3 presence or his celebrity status prior to that date you</p> <p>4 said which was February 5, 2021?</p> <p>5 A. What do you mean? Did I consider?</p> <p>6 Q. Did you consider how popular he was and how</p> <p>7 much publicity he had prior to that date?</p> <p>8 A. I mean, I guess I'd have to, you know, ask</p> <p>9 you to define what you mean by consider. Was I aware</p> <p>10 of it or did I incorporate that into my analysis?</p> <p>11 I'm -- don't understand what you're asking.</p> <p>12 Q. Fair enough. I'll rephrase. Did you</p> <p>13 consider as part of your analysis Mr. Lindell's online</p> <p>14 presence prior to February 5, 2021?</p> <p>15 A. I was aware of his online presence and I was</p> <p>16 aware of him being online and talking, yes.</p> <p>17 Q. You did not conduct any analysis of his</p> <p>18 online presence prior to February 5, 2021?</p> <p>19 A. Correct.</p> <p>20 Q. And you called Mr. Lindell's efforts a</p> <p>21 defamation campaign. Those were your words, correct?</p> <p>22 A. I coined the defamation campaign that way. I</p> <p>23 don't know if I pulled that from the complaint or if I</p> <p>24 coined it that way. I'm not sure.</p> <p>25 Q. So you're not giving any opinion as to</p> |
| <p style="text-align: right;">Page 14</p> <p>1 MR. KACHOUROFF: You're welcome.</p> <p>2 BY MR. KACHOUROFF:</p> <p>3 Q. Your report begins on -- well, I think the</p> <p>4 substance of it begins really on page 10. You talk</p> <p>5 about the impact of what you refer to as the defamation</p> <p>6 campaign. Smartmatic filed suit against Fox News on</p> <p>7 February the 5th, 2021, for alleged defamation. Are</p> <p>8 you aware of that case?</p> <p>9 A. I am aware of that case, yes.</p> <p>10 Q. And why are you aware of that case?</p> <p>11 A. Because it was in the news.</p> <p>12 Q. Are you an expert in that case?</p> <p>13 A. No.</p> <p>14 Q. But you are an expert in the Kumer case?</p> <p>15 A. The Kumer v. Lindell case?</p> <p>16 Q. Yes, sir.</p> <p>17 A. Yes, I am.</p> <p>18 Q. When was the first time that Mike Lindell</p> <p>19 mentioned the name Smartmatic?</p> <p>20 A. I mean, my investigation starts February 5,</p> <p>21 2021 with the airing of Absolute Proof.</p> <p>22 Q. And was the name Smartmatic isolated by</p> <p>23 itself or were there other names along with it?</p> <p>24 A. There are other names along with it.</p> <p>25 Q. Do you know who those other names are?</p> | <p style="text-align: right;">Page 16</p> <p>1 whether the statements were defamatory or not?</p> <p>2 A. Correct.</p> <p>3 Q. And on that note you don't have any opinion</p> <p>4 on whether a trade practice was deceptive or not?</p> <p>5 A. That's correct.</p> <p>6 Q. In your report I think you've included this</p> <p>7 campaign saved the defendants significant advertising</p> <p>8 costs, isn't that fair to say?</p> <p>9 A. That's correct.</p> <p>10 Q. Can you detail the assumptions and</p> <p>11 calculations that you used in your relief from</p> <p>12 pay-per-click analysis?</p> <p>13 A. One more time, please.</p> <p>14 Q. I'm sorry. Can you detail the assumptions</p> <p>15 and the calculations that you used in your relief from</p> <p>16 pay-per-click, the RFPPC analysis that you did?</p> <p>17 MS. LEVINE-PATTON: I'm going to object to</p> <p>18 form.</p> <p>19 Q. Let's start over. Where does RFPPC even come</p> <p>20 from?</p> <p>21 A. So that is based on a relief from royalty</p> <p>22 approach to damages.</p> <p>23 Q. That's something you created?</p> <p>24 A. No, I did not.</p> <p>25 Q. Who created the relief from pay-per-click</p> |

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| <p style="text-align: right;">Page 17</p> <p>1 analysis?</p> <p>2 A. Oh, I'm sorry. I was confused. I thought</p> <p>3 you asked me if I created the relief from royalty</p> <p>4 calculation, which I did not. But yes, I did create</p> <p>5 the relief from pay-per-click approach to damages.</p> <p>6 Q. How do you account for variables in that</p> <p>7 analysis such as the organic traffic growth and general</p> <p>8 market trends?</p> <p>9 A. The relief from pay-per-click approach looks</p> <p>10 at the amount of traffic or views -- it could be a</p> <p>11 video, it could be an article, it could be statements</p> <p>12 online -- how many views the articles or the videos</p> <p>13 received by using a defamatory statement, by using an</p> <p>14 infringed, you know, copyrighted image of a celebrity,</p> <p>15 by using -- infringing trademark use. So but for using</p> <p>16 an infringing or defamatory approach the in this case</p> <p>17 defendant saved on marketing spend that they should</p> <p>18 have paid via a pay-per-click campaign. So it is based</p> <p>19 on the cost savings that -- using in this case the</p> <p>20 defamation campaign.</p> <p>21 Q. But you didn't separate out -- well, you know</p> <p>22 that Mr. Lindell's campaign against the machines wasn't</p> <p>23 limited to Smartmatic. We just talked about that,</p> <p>24 right?</p> <p>25 A. Yes. I do know that.</p> | <p style="text-align: right;">Page 19</p> <p>1 correct?</p> <p>2 A. Say that again, please.</p> <p>3 Q. If the mentions included not only Smartmatic</p> <p>4 but Hart, Dominion, or any other machine company, those</p> <p>5 were not excluded from the 116,000 mentions?</p> <p>6 A. If in the 116,000 mentions of Smartmatic, in</p> <p>7 that bucket of 116,000 other companies or names might</p> <p>8 have been mentioned as well if that's what you're</p> <p>9 asking.</p> <p>10 Q. Correct. And you didn't segregate those out?</p> <p>11 A. No. I segregated the 28 million down to</p> <p>12 116,000 that only include mentions of Smartmatic but</p> <p>13 may include other companies or people.</p> <p>14 Q. So the benefit that you claim My Pillow</p> <p>15 obtained would not necessarily include mentioning the</p> <p>16 other companies as well?</p> <p>17 MS. LEVINE-PATTON: Object to form.</p> <p>18 A. Say that one more time. I'm sorry.</p> <p>19 MR. KACHOUROFF: Madam Court Reporter, would</p> <p>20 you mind reading that back?</p> <p>21 (Pending question read.)</p> <p>22 THE WITNESS: I don't -- I'm sorry. I don't</p> <p>23 understand the question.</p> <p>24 Q. I'll rephrase it.</p> <p>25 A. Thank you.</p> |
| <p style="text-align: right;">Page 18</p> <p>1 Q. I mean, he mentioned ES&S, Hart InterCivic,</p> <p>2 and Dominion, right?</p> <p>3 A. He did. Yes. That's why if you look at my</p> <p>4 analysis I first came up with over 28 million mentions</p> <p>5 and then I sifted and sorted and, you know, that down</p> <p>6 to 116,000 that were specifically -- that specifically</p> <p>7 included Smartmatic.</p> <p>8 Q. The 116,000 mentions -- and we'll get to</p> <p>9 that -- that was also in the context of the other</p> <p>10 companies like ES&S, Hart, and Dominion, wasn't it?</p> <p>11 A. What was your question?</p> <p>12 Q. The 116,000 views you say you narrowed down</p> <p>13 to Smartmatic, what statements were narrowed down to</p> <p>14 that 116,000 views?</p> <p>15 MS. LEVINE-PATTON: Object to form.</p> <p>16 Q. If you understand.</p> <p>17 A. I'm not understanding.</p> <p>18 Q. Where did the 116,000 views come from? You</p> <p>19 said that you used -- you narrowed it down just to</p> <p>20 Smartmatic, is that fair to say?</p> <p>21 A. I narrowed the 28 million mentions down to</p> <p>22 116,000 by weeding out mentions that did not include</p> <p>23 Smartmatic.</p> <p>24 Q. So if a mention included Smartmatic and other</p> <p>25 companies it still got included in the 116,000, is that</p> | <p style="text-align: right;">Page 20</p> <p>1 Q. The benefit that you claim My Pillow</p> <p>2 obtained, it would have included other companies like</p> <p>3 Hart, Dominion, or ES&S, not just Smartmatic?</p> <p>4 MS. LEVINE-PATTON: Objection. Same</p> <p>5 objection.</p> <p>6 A. Yeah. I can say that the benefit that</p> <p>7 defendant achieved, you know, based on the defamation</p> <p>8 campaign included other companies and names like I've</p> <p>9 already said. I want to make sure I'm -- it sounds</p> <p>10 like you're asking the same question but I want to make</p> <p>11 sure I'm hearing you right.</p> <p>12 Q. I think you've answered it if you're</p> <p>13 satisfied with that answer. You would agree that</p> <p>14 Mr. Lindell has the right to criticize voting machines,</p> <p>15 right?</p> <p>16 A. I don't have any opinions on his rights.</p> <p>17 Q. You believe in the first amendment, don't</p> <p>18 you?</p> <p>19 A. Yes.</p> <p>20 Q. And people have a first amendment right to</p> <p>21 speak about political matters, do they not?</p> <p>22 A. They do, but again, I'm not bringing</p> <p>23 expertise on the first amendment.</p> <p>24 Q. I'm not asking for expertise on the first</p> <p>25 amendment. I want just your understanding of basic</p> |

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| <p style="text-align: right;">Page 21</p> <p>1 human rights and whether people have a right to speak</p> <p>2 their minds on political matters.</p> <p>3 A. Yes, they do.</p> <p>4 Q. Now, on page 7 you say that Mr. Lindell</p> <p>5 accused Smartmatic of being engaged in a criminal</p> <p>6 enterprise?</p> <p>7 A. What paragraph are you on?</p> <p>8 Q. Page 7 of 710. I believe it's 710. Let me</p> <p>9 just make sure.</p> <p>10 A. Let's see. I'm on page 7. I see paragraph</p> <p>11 15.</p> <p>12 Q. Very top, the second bullet from the top. In</p> <p>13 this list you're referring to what you call the</p> <p>14 defamatory statements, and one was that Smartmatic was</p> <p>15 engaged in a criminal enterprise. Do you see that?</p> <p>16 A. Yes. These are -- these bullets are pulled</p> <p>17 from the claims in the complaint which is document 1A.</p> <p>18 Q. Okay. Did you hear that yesterday three</p> <p>19 Smartmatic executives were indicted for bribery in the</p> <p>20 Philippines, for their conduct in the Philippines?</p> <p>21 A. No.</p> <p>22 Q. So you're not opining on whether any of these</p> <p>23 statements are true or not?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. I'd like to talk about the approach</p> | <p style="text-align: right;">Page 23</p> <p>1 the video?</p> <p>2 A. I don't know. I'm looking for, you know,</p> <p>3 mentions of Smartmatic.</p> <p>4 Q. Well, you're claiming that My Pillow</p> <p>5 benefitted so I was just wondering if you knew what</p> <p>6 part of the videos contained My Pillow's ads.</p> <p>7 A. The approach with Mr. Lindell is related to</p> <p>8 promo codes, not necessarily ads.</p> <p>9 Q. Did you see any promo codes in the videos?</p> <p>10 A. The research I did that revealed 1,100 of the</p> <p>11 mentions talked about, you know, buying pillows, you</p> <p>12 know, talking about promo codes, you know, talking</p> <p>13 about, you know, Mr. Lindell lost tens of millions of</p> <p>14 dollars, let's help save him, everybody go buy some</p> <p>15 more pillows. So the research and investigation I did</p> <p>16 uncovered roughly 1,100 mentions of people connecting</p> <p>17 the defamation campaign to My Pillow's business.</p> <p>18 Q. We'll get to that in just a moment, but as</p> <p>19 regards the Absolute documentary series the answer is</p> <p>20 you did not see any My Pillow ads or coupon codes in</p> <p>21 those videos, is that fair to say?</p> <p>22 A. I don't recall if during the mentions or any</p> <p>23 speeches or during the series if promo codes were</p> <p>24 given. I don't recall.</p> <p>25 Q. And so you say that there were 11,022 [sic]</p> |
| <p style="text-align: right;">Page 22</p> <p>1 that you claim Mike Lindell had to the campaign, and I</p> <p>2 think it's also on page 7 where you talk about the</p> <p>3 approach. And you start with, paragraph 15, Absolute</p> <p>4 documentary series, media appearances, Cyber Symposium,</p> <p>5 and the post-complaint defamation. Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. Let's start with the Absolute documentary</p> <p>8 series. Did you watch the entire video Absolute Proof?</p> <p>9 A. I watched segments of it.</p> <p>10 Q. What segments did you watch?</p> <p>11 A. I looked for a segment -- so these were --</p> <p>12 these episodes in this Absolute documentary series was</p> <p>13 mentioned and alleged in the complaint. Therefore I</p> <p>14 went to these episodes to see what was said, if</p> <p>15 anything, about Smartmatic. So I watched, you know, a</p> <p>16 lot of the segments that didn't include mentions of</p> <p>17 Smartmatic and then found the mentions of Smartmatic.</p> <p>18 Q. And you talk about 28.1 million views or</p> <p>19 whatever it is, 28.3 million views. You don't know if</p> <p>20 the other 28.3 million people watched the entire video?</p> <p>21 A. Correct.</p> <p>22 Q. Someone could have watched it for five</p> <p>23 minutes and turned it off?</p> <p>24 A. That is possible.</p> <p>25 Q. When does the first My Pillow ad appear in</p> | <p style="text-align: right;">Page 24</p> <p>1 mentions out of 28.8 million views, right?</p> <p>2 A. Well, remember, my 28.5 million mentions was</p> <p>3 boiled down to the 116,000, so --</p> <p>4 Q. Correct. But there's still out of the 21.8</p> <p>5 million views there are 1,122 mentions that you were</p> <p>6 focused on?</p> <p>7 A. I would frame it as out of the 116,000</p> <p>8 relevant mentions 1,100 or so mention My Pillow</p> <p>9 products.</p> <p>10 Q. And so out of the 1,122 you don't know how</p> <p>11 many people actually bought My Pillow products?</p> <p>12 A. Yes. I did not get the analytics from the</p> <p>13 defendants as it relates to purchases.</p> <p>14 Q. You -- what those 1,122 mentions represented</p> <p>15 according to you was people who bought, encouraged</p> <p>16 others to buy, or who passed on coupon codes, is that</p> <p>17 fair to say?</p> <p>18 A. That's fair to say, and, you know, what was</p> <p>19 important for me to find out or to discover is people</p> <p>20 were associating this what I'm coining as the</p> <p>21 defamation campaign to My Pillow products.</p> <p>22 Q. Are you aware of any time that My Pillow ever</p> <p>23 promoted anything about Mr. Lindell's election</p> <p>24 theories?</p> <p>25 A. I did not analyze or have access to any of My</p> |

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| <p style="text-align: right;">Page 25</p> <p>1 Pillow's, you know, marketing activities.</p> <p>2 Q. You did searches online for My Pillow</p> <p>3 marketing activities, did you not?</p> <p>4 A. I did searches online, you know, in my query</p> <p>5 as it relates to the pieces of defamation campaign.</p> <p>6 Q. On page 10 -- we'll turn to page 10. I'm</p> <p>7 going to try to do this in sequence so as we go through</p> <p>8 I hope not to have to go back and forth in your report,</p> <p>9 so I don't want it to be confusing. Page 10 and 11 you</p> <p>10 begin what I call the financial performance analysis.</p> <p>11 A. Yes.</p> <p>12 Q. Okay. You say on page -- let's see. If we</p> <p>13 can go down to one more page, page 12.</p> <p>14 A. Do you have paragraph numbers?</p> <p>15 Q. Yes. Let's start on paragraph 26, page 12.</p> <p>16 You say, based on this information people associated My</p> <p>17 Pillow products with the defamation campaign. At the</p> <p>18 same time defendants experienced increased revenues and</p> <p>19 decreased advertising costs.</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. You would agree that you're not an economist?</p> <p>23 A. I am not an economist.</p> <p>24 Q. Okay. What products did My Pillow sell in</p> <p>25 2020 and 2021?</p> | <p style="text-align: right;">Page 27</p> <p>1 some research that showed that those were canceled for</p> <p>2 other reasons and the mention of the election was not</p> <p>3 brought up at all.</p> <p>4 Q. Okay. I did a search -- I did your searches,</p> <p>5 by the way, and I got the opposite result where it said</p> <p>6 that he was being canceled all at one time by all these</p> <p>7 box stores in January of 2021. Did you not see that?</p> <p>8 A. Did you clear your cache before your search?</p> <p>9 Q. I had never done your search before. I was</p> <p>10 asking you.</p> <p>11 A. No. I'm asking when you did your search did</p> <p>12 you clear your --</p> <p>13 (Reporter clarification.)</p> <p>14 A. -- cache? Your C-A-C-H-E. Yes. So what's</p> <p>15 your question?</p> <p>16 Q. So you excluded news articles, a number of</p> <p>17 them it seems, and really had to dig really deep to</p> <p>18 find what you consider to be nonpolitical reasons for</p> <p>19 the cancellation, isn't that --</p> <p>20 A. I didn't -- no. I didn't have to dig very</p> <p>21 deep. I did a simple search and I shared with you in</p> <p>22 the report the results that I saw.</p> <p>23 Q. Right.</p> <p>24 A. None of them mention being -- you know, box</p> <p>25 shops or retailers canceling because of what</p> |
| <p style="text-align: right;">Page 26</p> <p>1 A. They sold a variety of products ranging from</p> <p>2 pillows to bedsheets to -- I have an exhibit here of</p> <p>3 the products they sold.</p> <p>4 Q. Do you know what the manufacturing cost was</p> <p>5 for a My Pillow product in 2020?</p> <p>6 A. The manufacturing cost -- well, I have the</p> <p>7 costs of goods sold. I don't have manufacturing costs.</p> <p>8 Q. What about manufacturing costs for 2021?</p> <p>9 A. Again, I have the COG information only.</p> <p>10 Q. So you don't have My Pillow's profit margins</p> <p>11 in your revenue analysis?</p> <p>12 A. I do have profit margins, and again here I'm</p> <p>13 focusing on the advertising to revenue ratio.</p> <p>14 Q. I understand that, but you don't have net</p> <p>15 profits. You don't know what their margins were on the</p> <p>16 sale of a single pillow?</p> <p>17 A. I do not.</p> <p>18 Q. You know that in your report you talk about</p> <p>19 the cancellation of all these box stores, and in your</p> <p>20 mind it had nothing to do with his, quote, unquote,</p> <p>21 campaign, is that fair to say?</p> <p>22 A. I wouldn't say in my mind. Mr. Growsky, you</p> <p>23 know, said that those cancellations were due to the</p> <p>24 defamation campaign but without any evidence. Because</p> <p>25 he didn't provide any evidence I did dig in and I did</p> | <p style="text-align: right;">Page 28</p> <p>1 Mr. Lindell is saying about the election.</p> <p>2 Q. Do you find it probative that all the box</p> <p>3 stores seemed to cancel in January of 2021?</p> <p>4 A. That's not what I saw.</p> <p>5 Q. When did BJ's cancel him?</p> <p>6 A. I have to go to my exhibit.</p> <p>7 Q. It would be January 20, 2021. Do you know</p> <p>8 what happened on January 20, 2021?</p> <p>9 A. You said what was it? BJ's?</p> <p>10 Q. Correct. Are you searching on your computer</p> <p>11 now?</p> <p>12 A. Oh, I'm looking at my report. BJ's Wholesale</p> <p>13 Club was not with him in 2018, was with him in 2019,</p> <p>14 '20, seemed to have lost money in '21, and then is no</p> <p>15 longer with them in '22. So it appears that the -- you</p> <p>16 know, the total sales of BJ's was not doing so good.</p> <p>17 And yes, they're no longer with My Pillow in '22.</p> <p>18 MS. LEVINE-PATTON: And just for the record,</p> <p>19 Mr. Bania, what part of your report are you looking at</p> <p>20 when you're describing that?</p> <p>21 THE WITNESS: I'm looking at schedule 2D.</p> <p>22 I'm sorry. 2B as in boy.</p> <p>23 MS. LEVINE-PATTON: Thank you.</p> <p>24 Q. Did you contact BJ's to find out why they</p> <p>25 canceled Mr. Lindell?</p> |

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| <p style="text-align: right;">Page 29</p> <p>1 A. No.</p> <p>2 Q. You relied on Google?</p> <p>3 A. The internet research I did in my report, you</p> <p>4 know, states the process I took and, you know, I saw</p> <p>5 other reasons why retailers were canceling. I didn't</p> <p>6 see any evidence that it's because of what Mr. Lindell</p> <p>7 is saying about the election campaign.</p> <p>8 Q. There were articles that were equating the</p> <p>9 cancellation to his election campaign, were there not?</p> <p>10 A. Again, my articles did not show anything</p> <p>11 related to the election campaign.</p> <p>12 Q. Okay. Do you know when Bed Bath & Beyond</p> <p>13 canceled Mr. Lindell?</p> <p>14 A. I see revenue from 2018 through 2022, so I</p> <p>15 don't know.</p> <p>16 Q. Do you know whether CNN canceled Mr. Lindell?</p> <p>17 A. Whether who did?</p> <p>18 Q. CNN.</p> <p>19 A. I don't know.</p> <p>20 Q. What about CVS?</p> <p>21 A. I see that based on schedule 2B as in boy I</p> <p>22 see no revenue or sales in 2022.</p> <p>23 Q. What about MSNBC?</p> <p>24 A. I don't have information about MSNBC.</p> <p>25 Q. Were you aware that My Pillow cut its prices</p> | <p style="text-align: right;">Page 31</p> <p>1 was it not?</p> <p>2 MS. LEVINE-PATTON: Objection to form.</p> <p>3 A. I did not -- well, I'm not sure what you mean</p> <p>4 by booming, but I did not do any analysis as it relates</p> <p>5 to retail sales compared to online sales in this</p> <p>6 report.</p> <p>7 MR. KACHOUROFF: I'm going to drop in the</p> <p>8 chat -- we'll call this Exhibit 712. Madam Court</p> <p>9 Reporter, I apologize. 710 is his report. 711 would</p> <p>10 be the rebuttal. 712 is the latest document.</p> <p>11 (Whereupon, Exhibit 712, Article, was marked</p> <p>12 for identification.)</p> <p>13 A. Okay. I have this up.</p> <p>14 Q. This talks about e-commerce increasing as a</p> <p>15 result of COVID in the 2020 to 2021 time frame.</p> <p>16 MS. LEVINE-PATTON: I'm sorry. Before he</p> <p>17 answers any question I want to make sure Mr. Bania has</p> <p>18 had a chance to review the full document before</p> <p>19 answering any questions about it.</p> <p>20 MR. KACHOUROFF: Sure, sure.</p> <p>21 THE WITNESS: Yeah. Let me quickly take a</p> <p>22 look.</p> <p>23 MS. LEVINE-PATTON: Thank you.</p> <p>24 THE WITNESS: Yes. I've reviewed it.</p> <p>25 Q. This talks about consumer behavior, there</p> |
| <p style="text-align: right;">Page 30</p> <p>1 in 2021?</p> <p>2 A. No.</p> <p>3 Q. But you are aware that the sales went up in</p> <p>4 2021?</p> <p>5 A. Yes.</p> <p>6 Q. If My Pillow's margins were lower that means</p> <p>7 that they'd have to sell more in order to make the same</p> <p>8 amount of money, isn't that fair to say?</p> <p>9 A. Say that one more time.</p> <p>10 Q. If My Pillow's margins, its profit margins</p> <p>11 were lower in 2021 they would have to sell more in</p> <p>12 order to make the same amount of profit?</p> <p>13 A. Yes.</p> <p>14 Q. You did not consider that in your analysis,</p> <p>15 did you?</p> <p>16 A. No. I did not have -- I did not have</p> <p>17 detailed financial information as it related to, you</p> <p>18 know, specific products.</p> <p>19 Q. Did you consider that retail sales were</p> <p>20 stagnant at brick-and-mortar locations in 2020 and</p> <p>21 2021?</p> <p>22 A. Yeah. It's -- yeah. 2021, you said?</p> <p>23 Q. Correct, in 2020 and 2021.</p> <p>24 A. Yes, yes. That is the time of COVID.</p> <p>25 Q. And e-commerce was booming during that time,</p> | <p style="text-align: right;">Page 32</p> <p>1 being an e-commerce boom during that time frame. Do</p> <p>2 you see that?</p> <p>3 A. Yes.</p> <p>4 Q. That boom in online sales, that could have</p> <p>5 accounted for the increase in sales revenues as well,</p> <p>6 correct?</p> <p>7 A. More people buying online, it would replace</p> <p>8 going to the store. So it makes sense retail sales</p> <p>9 would go down and e-commerce sales would go up.</p> <p>10 Q. Now, your methodology, let's pull up your</p> <p>11 search terms?</p> <p>12 A. Can I close this document?</p> <p>13 Q. Yes, sir. I'm sorry. Yes. You can close</p> <p>14 that. I think you've already answered this at the</p> <p>15 outset but just -- I want to make sure. You did not</p> <p>16 include the other voting machine companies in your</p> <p>17 searches; just the name Smartmatic?</p> <p>18 A. Yes. I did not include them, no.</p> <p>19 Q. You know that he did bash all of them in the</p> <p>20 same sentence at times, correct?</p> <p>21 A. I know that he was bringing Dominion into</p> <p>22 this alleged election fraud. I know he called</p> <p>23 Smartmatic the mother ship.</p> <p>24 Q. And you estimated that -- what you call the</p> <p>25 reach of this campaign using video views and social</p> |

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| <p style="text-align: right;">Page 33</p> <p>1 media mentions. Do you recall that?</p> <p>2 A. Yes.</p> <p>3 Q. How did you address potential inaccuracies in</p> <p>4 the view counts such as repeated views by the same</p> <p>5 users or bots? And what I mean by bots are those</p> <p>6 computer-generated inflating number programs.</p> <p>7 A. Yes. Again, as I've explained, I went from</p> <p>8 28 million mentions down to the 116,000 mentions, you</p> <p>9 know, by manually weeding out nonrelevant information.</p> <p>10 And then that, you know, led to the video views, the</p> <p>11 21.8 million video views, and there could be some bots.</p> <p>12 There might not be bots. I don't know. You know, a</p> <p>13 bot analysis was not -- I was not able to do that.</p> <p>14 Q. When you conducted your analysis you're</p> <p>15 equating -- help me understand this. You're equating</p> <p>16 the views on his videos with a pay-per-click?</p> <p>17 A. So the 21.8 million views, my opinion is he</p> <p>18 used the defamation campaign to generate those views as</p> <p>19 opposed to paying per click. As we know, Mr. Lindell</p> <p>20 has used Google Ads in the past as I mention in</p> <p>21 paragraph 31 of my report. He got in trouble by Google</p> <p>22 because of his election claims, therefore could not use</p> <p>23 Google Ads anymore. And then my opinion is he went on</p> <p>24 using this defamation campaign to generate those video</p> <p>25 views. So yes, so each of those video views he should</p> | <p style="text-align: right;">Page 35</p> <p>1 videos were mostly on the Rumble and Bitchute. But</p> <p>2 Mr. Lindell promoted and promotes My Pillow with</p> <p>3 basically everything he does, you know, the Cyber</p> <p>4 Symposium, which was about, you know, election was</p> <p>5 stolen, in which he, you know, promoted this defamation</p> <p>6 campaign. Along with that he promotes My Pillow.</p> <p>7 Q. Okay. So I don't want to confuse the issue.</p> <p>8 When you keep saying defamation campaign, those are</p> <p>9 your words to describe it. You're not saying there was</p> <p>10 actual defamation, right?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. The Cyber Symposium was three days,</p> <p>13 was it not?</p> <p>14 A. It was.</p> <p>15 Q. Do you know which day any My Pillow ad</p> <p>16 appeared?</p> <p>17 A. Again, what is your definition of a My Pillow</p> <p>18 ad?</p> <p>19 Q. Is -- I know you know -- I'm not trying to</p> <p>20 play games with you, but you know what the word ad</p> <p>21 means. Do you have any indication of any day during</p> <p>22 this Cyber Symposium that My Pillow produced any</p> <p>23 advertisement, promo code, or other means to sell</p> <p>24 pillows or his products at that Cyber Symposium?</p> <p>25 A. Mr. Lindell is an ad for My Pillow. That's</p> |
| <p style="text-align: right;">Page 34</p> <p>1 have paid per click like he used to do.</p> <p>2 Q. So My Pillow -- would it surprise you that My</p> <p>3 Pillow spends the same amount on Google Ads both before</p> <p>4 and after January 1, 2020?</p> <p>5 A. I don't have any Google Ads financial</p> <p>6 information.</p> <p>7 Q. You understand that My Pillow is an entity</p> <p>8 separate from Mr. Lindell, correct?</p> <p>9 A. Yes.</p> <p>10 Q. But you're equating the views of his videos</p> <p>11 to pay-per-click advertising. That's what I want to</p> <p>12 focus on right now.</p> <p>13 A. That's correct.</p> <p>14 Q. What is the purpose of pay-per-click?</p> <p>15 A. It is to drive traffic to your website.</p> <p>16 Q. For who?</p> <p>17 A. For the advertiser.</p> <p>18 Q. And you can't just click on the video,</p> <p>19 Mr. Lindell's video, and get to My Pillow, can you?</p> <p>20 A. That's correct.</p> <p>21 Q. There were no links to My Pillow on his video</p> <p>22 sites, were there?</p> <p>23 A. He used promo codes.</p> <p>24 Q. On which sites?</p> <p>25 A. The sites that I focused on, you know, the</p> | <p style="text-align: right;">Page 36</p> <p>1 what he does. He promotes --</p> <p>2 Q. Okay.</p> <p>3 A. -- My Pillow. He uses promo codes. He</p> <p>4 always talks about My Pillow. So in my opinion he is a</p> <p>5 walking, talking advertisement for My Pillow.</p> <p>6 Q. So he doesn't have to mention My Pillow in</p> <p>7 order to be advertising My Pillow? Is that what you're</p> <p>8 saying?</p> <p>9 A. The opposite. I am not saying that.</p> <p>10 Q. You can't name a single day in the convention</p> <p>11 where a My Pillow promo code was produced, can you?</p> <p>12 A. I -- like I said, you asked about when is a</p> <p>13 My Pillow ad being displayed at the Cyber Symposium. I</p> <p>14 asked you, what is your definition of an ad, okay? And</p> <p>15 then I'm clarifying that Mr. Lindell talking about My</p> <p>16 Pillow, buy My Pillow, go get my products, here's a</p> <p>17 promo code. That is an advertisement. He is</p> <p>18 advertising. He is marketing and promoting My Pillow</p> <p>19 during the Cyber Symposium and these other media tours.</p> <p>20 Q. Did you see at any time in the Cyber</p> <p>21 Symposium any time that Mr. Lindell offered a My Pillow</p> <p>22 coupon code?</p> <p>23 A. I believe that when he mentioned My Pillow</p> <p>24 there was a promo code at the bottom of the screen.</p> <p>25 Q. Okay.</p> |

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| <p style="text-align: right;">Page 37</p> <p>1 A. Verbally or visually, I did not -- I don't 2 know exactly how many of each. But yes, there are 3 promo codes being used verbally and visually. 4 Q. Now, you have estimated valuation of IP in 5 the past, correct? 6 A. Have I -- say that again, please. 7 Q. It was a bad question. Let me rephrase it. 8 In the past you have valued intellectual property such 9 as a company name? 10 A. Yes. 11 Q. If a company name is worth zero is there 12 still an infringement on that property? 13 A. That is a legal -- well, it's a legal 14 opinion. 15 Q. It is. You're right. Bad question. Let 16 me -- I'll withdraw the question and let me rephrase 17 it. When you valued a company's name, if the company's 18 name is worth zero can they still suffer damages 19 because somebody uses that name, monetary damages? 20 A. So if I am hired to value a company's name 21 and I come up with a value of zero, is that the 22 hypothetical? 23 Q. Yes, sir. 24 A. Okay. And then somebody infringes on that 25 name. Can there be damages? Is that your question?</p> | <p style="text-align: right;">Page 39</p> <p>1 Q. I want to get back to the pay-per-click in 2 the video analogy that you've drawn. When you watch a 3 video if you see a My Pillow on the video you would 4 have to move your mouse curser to the address bar or 5 open a new tab in order to get to My Pillow, is that 6 fair to say? 7 A. Say that again, please. 8 Q. While you're watching a video if you 9 wanted to -- you saw My Pillow on one of these -- would 10 you -- what we call the Absolute Proof videos and you 11 see -- let's assume that there was a My Pillow display 12 on the documentary somewhere. Unlike a pay-per-click 13 you'd have to move your mouse curser to the address bar 14 to get to My Pillow, right? 15 MS. LEVINE-PATTON: Object to form. 16 A. Well, I mean, not necessarily. I mean, like 17 I said, the promo codes are used. That's a visual. 18 Somebody could then, you know, go to MyPillow.com and 19 use that promo code and not necessarily have to move 20 their mouse on that video. 21 Q. So as opposed to a click which sends you 22 right to the site, you're agreeing with me that you'd 23 have to move the mouse cursor to a new page or the 24 address bar to get to the My Pillow site? 25 MS. LEVINE-PATTON: Objection.</p> |
| <p style="text-align: right;">Page 38</p> <p>1 Q. Sure. 2 A. First of all, there could be. I mean, 3 obviously every valuation is different. Every piece of 4 litigation is very unique. 5 Q. Sure. 6 A. So there could be damages. It depends -- 7 yeah, how is the defendant using the name and did using 8 that name produce an economic benefit for them? 9 Q. Obviously if the intellectual property in the 10 name is worth zero one would not expect damages to be 11 too high, would you? 12 MS. LEVINE-PATTON: Object to form. 13 A. I -- yeah. I don't have an opinion on that. 14 You know, intellectual property's value to one company 15 could be a different value to another company. 16 Q. Did you consider Smartmatic's reputation in 17 its name before 2021? 18 A. I did not do any valuation as it relates to 19 Smartmatic. 20 Q. Did you value the Smartmatic name at all in 21 your consideration of whether there were damages in 22 this case? 23 A. Well, remember at the beginning of my depo 24 one of my first paragraphs mentioned that I didn't 25 value anything.</p> | <p style="text-align: right;">Page 40</p> <p>1 Mischaracterizes the testimony. 2 A. Yeah. I think maybe you're missing what the 3 definition from the relief from pay-per-click 4 methodology is, and I'm happy to discuss that if you'd 5 like to. But to answer your question, you're asking me 6 about moving a mouse? 7 Q. Yeah, a computer mouse. In other words, 8 you're the one who equated pay-per-click with a video 9 and I want to see how similar the pay-per-click method 10 is as opposed to watching a video and having to 11 manually move your mouse to a new tab or the address 12 bar. 13 A. Yeah. I see the disconnect here. So what 14 I'm saying is Mr. Lindell used the defamation campaign 15 to generate the 21.8 million views. And -- you know, 16 and if, you know, it's a legal opinion whether or not 17 that is defamation. And setting all the legal stuff 18 aside, he shouldn't have been, you know, talking about 19 Smartmatic in this way, you know, if legally it is 20 determined that there's defamation. Therefore he 21 should have paid per click to get those 21 million 22 views. So it's used as proxy. You know, he's used 23 Google pay-per-click in the past. He's no longer using 24 it now because he's using the defamation campaign to 25 generate his views. So he should have paid per click</p> |

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| <p style="text-align: right;">Page 41</p> <p>1 to get those views is what I'm saying.</p> <p>2 Q. What evidence do you have that he used Google</p> <p>3 pay-per-click in the past?</p> <p>4 A. Well, I believe on my paragraph 31 I</p> <p>5 mentioned here Lindell is aware of Google Ads and is</p> <p>6 experienced in online advertising to draw traffic to</p> <p>7 his -- the Lindell websites to increase sales.</p> <p>8 Q. What sales did he increase on the Lindell</p> <p>9 websites?</p> <p>10 A. Well, the goal is to get somebody to your</p> <p>11 website. I don't have -- I did not receive any</p> <p>12 information on, you know, per person purchases. So --</p> <p>13 but the whole goal of pay-per-click advertising or the</p> <p>14 defamation campaign is to drive people to the website.</p> <p>15 That's the first step. And then a certain percent of</p> <p>16 them will make a purchase. Now, I'm not talking about</p> <p>17 unjust enrichment here. I'm talking about the</p> <p>18 marketing cost avoided via pay-per-click by using the</p> <p>19 defamation campaign.</p> <p>20 Q. Are you aware that My Pillow has never used</p> <p>21 pay-per-click since 2010?</p> <p>22 A. I did not know that.</p> <p>23 Q. Did you know that they exclusively used promo</p> <p>24 codes in his marketing techniques --</p> <p>25 (Reporter clarification.)</p> | <p style="text-align: right;">Page 43</p> <p>1 what we were talking about.</p> <p>2 MS. LEVINE-PATTON: I'm sorry. What was the</p> <p>3 question so the record is clear?</p> <p>4 Q. All right. There's a difference between My</p> <p>5 Pillow and Mr. Lindell buying Google Ads, is there not?</p> <p>6 A. So your question, is there a difference</p> <p>7 between My Pillow the company buying Google Ads --</p> <p>8 Q. Right.</p> <p>9 A. -- and Mr. Lindell as a person buying Google</p> <p>10 Ads?</p> <p>11 Q. Correct.</p> <p>12 A. I would think that Mr. Lindell would be --</p> <p>13 the person would be buying Google Ads for My Pillow.</p> <p>14 Q. The -- when Google canceled him did they</p> <p>15 cancel My Pillow or did they cancel him for trying to</p> <p>16 get his political views across?</p> <p>17 MS. LEVINE-PATTON: Object to form.</p> <p>18 A. Say that one more time.</p> <p>19 Q. When Google canceled as you mentioned in your</p> <p>20 complaint -- your report did they do so because he was</p> <p>21 trying to advertise My Pillow or because he was trying</p> <p>22 to advertise his documentary series?</p> <p>23 A. My understanding is they no longer allowed</p> <p>24 him to use his name in Google Ads because of his</p> <p>25 opinions on the election.</p> |
| <p style="text-align: right;">Page 42</p> <p>1 MR. KACHOUROFF: Did you want me to restate</p> <p>2 the question?</p> <p>3 COURT REPORTER: Yes, please.</p> <p>4 Q. Were you aware that since 2010 he used promo</p> <p>5 codes exclusively?</p> <p>6 A. Based on my paragraph 30 he has a video</p> <p>7 talking about using Google Ads. He has a video talking</p> <p>8 about how because of this defamation campaign he's no</p> <p>9 longer to use Google Ads. He tried to use his name in</p> <p>10 Google Ads. Google no longer allows him to do that</p> <p>11 because of this defamation campaign. So my</p> <p>12 understanding is he has used Google Ads and can no</p> <p>13 longer use them because of what he's saying about the</p> <p>14 election. So those are the facts that I have.</p> <p>15 Q. That has nothing to do with My Pillow using</p> <p>16 coupon codes, does it?</p> <p>17 A. Well, again, Google Ads, which he's used in</p> <p>18 the past, is used to drive traffic to a website and</p> <p>19 hopefully somebody buys something.</p> <p>20 (Reporter clarification.)</p> <p>21 Q. Mr. Bania, I have a tendency to talk fast. I</p> <p>22 hope you don't take it as being disrespectful. I'm</p> <p>23 not -- I don't intend that. So I'll try to slow down.</p> <p>24 You being from California have plenty of people who</p> <p>25 talk the way I do. But go ahead. Let's get back to</p> | <p style="text-align: right;">Page 44</p> <p>1 Q. Would it surprise you that he was using</p> <p>2 Google Ads to drive people to his documentary site?</p> <p>3 A. No.</p> <p>4 Q. Would it surprise you that that went on for</p> <p>5 exactly two hours?</p> <p>6 A. What went on?</p> <p>7 Q. His Google Ads for two hours before he was</p> <p>8 shut down.</p> <p>9 A. And what's the question?</p> <p>10 Q. Would it surprise you that Google shut him</p> <p>11 down just after two hours of using his ads to drive</p> <p>12 traffic to his documentary series?</p> <p>13 A. I don't have any opinion about being</p> <p>14 surprised or what Google is doing here. I just know</p> <p>15 that Google, you know, didn't allow him to use his name</p> <p>16 in Google Ads anymore.</p> <p>17 Q. You read what he wrote about it online or</p> <p>18 what he said about it online, didn't you?</p> <p>19 A. Yeah. I watched a video talking about how</p> <p>20 Google's not allowing him to use his name anymore</p> <p>21 because Google put efforts together to remove election</p> <p>22 fraud conspiracy theories.</p> <p>23 Q. I understand that's what you think Google</p> <p>24 did, but you would agree with me that has nothing to do</p> <p>25 with My Pillow buying Google AdWords?</p> |

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| <p style="text-align: right;">Page 45</p> <p>1 A. Based on my investigation Mr. Lindell, 2 whether he is playing a role in the defamation 3 campaign, whether he's playing a role in Absolute Proof 4 or any of the other, you know, talk shows he's been 5 involved with, he's always promoting My Pillow. 6 Q. We talked about that. 7 A. Okay. Is that what you're asking? 8 Q. No. But we can move on because I want to go 9 back again. The pay-per-click that we were talking 10 about is different than driving traffic to a website 11 where a documentary is housed, is that fair to say? 12 A. One more time, please. 13 Q. A pay-per-click ad is functionally different 14 than watching a video, correct? 15 A. Yes. 16 Q. Watching a video and compelling the viewer to 17 go online to look for another website would be wholly 18 inefficient, would it not? 19 A. No. 20 Q. You think it's as easy as clicking on a 21 pay-per-click button? 22 A. When you have the owner of a company touting, 23 you know, election theories and how he's been harmed in 24 this defamation campaign I think is more powerful 25 and -- more powerful than a pay-per-click campaign.</p> | <p style="text-align: right;">Page 47</p> <p>1 Q. So they're ready to buy is what we're saying, 2 right? 3 A. No. 4 Q. So they're just going to go to My Pillow's 5 website without any intention of buying? 6 A. Google does not guarantee -- after somebody 7 clicks on your ad and you pay 75 cents or \$5 they don't 8 guarantee that anybody's going to buy. Half the battle 9 for a business is getting people to your website, and 10 that's what, you know, pay-per-click advertisement is 11 about. 12 Q. Right. 13 A. You know, using a promo code is luring people 14 to go to the website, but you can't -- you know, 15 there's no guarantee they're going to buy anything. 16 Q. Right. And even with a pay-per-click they're 17 not necessarily going to buy anything, but they're -- 18 at least you're honing in on the person that wants 19 something, is that fair to say? 20 A. You're hoping that somebody's going to buy 21 something. That's the goal of pay-per-click 22 advertisement. Or maybe somebody wants you to download 23 something or maybe, you know, another company wants you 24 to read something. The goal with pay-per-click 25 advertising is get somebody to your website to do</p> |
| <p style="text-align: right;">Page 46</p> <p>1 When you have, you know, the owner of the company in 2 these videos promoting My Pillow I think that's a 3 pretty powerful marketing campaign, very powerful 4 business development strategy. 5 Q. So out of 21.8 million video views you came 6 up with 1,122 mentions about buying My Pillows or 7 encouraging others to buy the pillows or passing on a 8 coupon? 9 A. Yes. 10 Q. Isn't it true that pay-per-click targets 11 people that are ready to buy? 12 A. No. 13 Q. In other words, if somebody visits a web page 14 and they see a pay-per-click they make a decision about 15 whether to buy or not when they see that button, isn't 16 that fair to say? 17 A. No. You know, they don't see a web page and 18 then see a pay-per-click. They do a Google search, an 19 organic search, and up pops up [sic] the ad. And then 20 they click on that and go to the website. 21 Q. So what are they doing in the organic search? 22 What are they searching for? 23 A. Well, as I mentioned in my report, the 24 various keywords I chose ranging from My Pillow or 25 Mike Lindell.</p> | <p style="text-align: right;">Page 48</p> <p>1 whatever your goal is. 2 Q. Okay. And Mr. Lindell's goal could have been 3 to propagate his video so people could learn what he 4 believed was the truth, isn't that fair to say? 5 MS. LEVINE-PATTON: Objection. Speculation. 6 A. Yeah. I mean, my opinion is, you know, 7 Mr. Lindell's goal is to sell more products. 8 Q. I got that's what your goal -- well, you 9 think that's what it is. 10 A. Yeah. He promoted his website with promo 11 codes, I mean, during, you know, these -- during the 12 defamation campaign. 13 Q. Which websites did he promote -- did he offer 14 promo codes on? 15 A. On MyPillow.com. 16 Q. MyPillow.com has always had promo codes even 17 before 2020. Would you agree with that? 18 A. Yes. 19 Q. So when did My Pillow ever offer a promo code 20 that said Smartmatic? 21 A. There were no promo codes that said 22 Smartmatic. 23 Q. What was the cost for him creating the video 24 Absolute Proof? Do you know? 25 A. No.</p> |

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| <p style="text-align: right;">Page 49</p> <p>1 Q. What was the cost for his Cyber Symposium?</p> <p>2 Do you know that?</p> <p>3 A. No.</p> <p>4 Q. What was the cost for his FrankSpeech</p> <p>5 platform?</p> <p>6 A. I don't know.</p> <p>7 Q. You never included the costs for those things</p> <p>8 in your advertising cost, did you?</p> <p>9 A. No. I did not -- I have not received any of</p> <p>10 those costs.</p> <p>11 Q. It's fair to say that you don't know the</p> <p>12 intricate details of how the company My Pillow</p> <p>13 advertises its products, do you?</p> <p>14 A. Again, my assignment was to determine the</p> <p>15 cost avoided by leveraging off the defamation campaign,</p> <p>16 so I don't have the detailed costs as it relates to</p> <p>17 running his business.</p> <p>18 Q. Okay. I would like to switch briefly to your</p> <p>19 rebuttal report.</p> <p>20 A. Okay. Should I keep my main report open?</p> <p>21 Q. I don't think you need to.</p> <p>22 A. Okay.</p> <p>23 Q. Isn't the -- when you go ahead and value My</p> <p>24 Pillow's benefit isn't that a business valuation you're</p> <p>25 conducting?</p> | <p style="text-align: right;">Page 51</p> <p>1 formed by somebody with those credentials.</p> <p>2 A. Whose opinions are these now?</p> <p>3 Q. Dr. Growsky. Sorry. Mr. Growsky. I'm</p> <p>4 sorry.</p> <p>5 A. Mr. Growsky's opinions. Okay. And your</p> <p>6 question again?</p> <p>7 Q. You know that he has his CPA license, do you</p> <p>8 not?</p> <p>9 A. I do.</p> <p>10 Q. He's got a juris doctor?</p> <p>11 A. He does.</p> <p>12 Q. Are you aware of that? An accounting degree?</p> <p>13 A. Yes.</p> <p>14 Q. A certified valuation expert?</p> <p>15 A. Okay.</p> <p>16 Q. You're not qualified to tell somebody with</p> <p>17 those credentials what information they should or</p> <p>18 should not include in their reports, are you?</p> <p>19 MS. LEVINE-PATTON: Object to form.</p> <p>20 A. I do that all the time.</p> <p>21 Q. And what's your basis for determining that</p> <p>22 somebody with those credentials has failed to properly</p> <p>23 conduct the analysis?</p> <p>24 A. Well, my basis is based on experience, so I</p> <p>25 am qualified based on my experience, but he says a lot</p> |
| <p style="text-align: right;">Page 50</p> <p>1 A. No.</p> <p>2 Q. What about a partial business valuation?</p> <p>3 A. No.</p> <p>4 Q. How do you define business valuation?</p> <p>5 A. I define -- you know, it's valuing the entire</p> <p>6 business as it relates to revenues and profits.</p> <p>7 Q. And talking about the benefit to My Pillow on</p> <p>8 this campaign would be a valuation, would it not?</p> <p>9 A. We would look at the marketing spend, you</p> <p>10 know, so again, my assignment was looking at the costs</p> <p>11 of -- marketing cost avoided by using the defamation</p> <p>12 campaign.</p> <p>13 Q. Can you turn to page 8 of your rebuttal</p> <p>14 report, paragraph 19?</p> <p>15 A. Paragraph 19?</p> <p>16 Q. Correct.</p> <p>17 A. Yes.</p> <p>18 Q. You are disputing what Mr. Growsky claims</p> <p>19 here, are you not?</p> <p>20 A. Let me read 19 real quick. Yes.</p> <p>21 Q. Mr. Growsky has a CPA, a juris doctor, and an</p> <p>22 accounting degree. Do you know that?</p> <p>23 A. Yes. Are we talking about Growsky? We --</p> <p>24 has he stepped out of this role as an expert?</p> <p>25 Q. His opinions are still there. They were</p> | <p style="text-align: right;">Page 52</p> <p>1 of stuff but doesn't show any of his analysis. He</p> <p>2 talks about, you know, sales increased because of new</p> <p>3 products that were introduced in 2020 but provides no</p> <p>4 evidence.</p> <p>5 Q. Well, let's take a look at figure one on that</p> <p>6 page 8. Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Look at the percentage of the cost of goods</p> <p>9 sold as a percentage of total sales.</p> <p>10 A. Yes.</p> <p>11 Q. It goes from 39 percent to 49 percent in 2020</p> <p>12 to 2021. You see that?</p> <p>13 A. Yes, yes.</p> <p>14 Q. It's a 10 percent increase?</p> <p>15 A. Correct.</p> <p>16 Q. Advertising did not stay flat, the</p> <p>17 advertising cost rather?</p> <p>18 A. That's true.</p> <p>19 Q. This supports Mr. Lindell's and My Pillow's</p> <p>20 statements that they had to generate more revenue</p> <p>21 because the cost of goods sold cost them more money,</p> <p>22 isn't that fair to say?</p> <p>23 A. No. What I'm saying here is Mr. Growsky says</p> <p>24 that the revenues went up in '21 because of these new</p> <p>25 products but without any evidence, but if you dig into</p> |

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| <p style="text-align: right;">Page 53</p> <p>1 those details these new products only were about 2 to 3</p> <p>2 percent of total sales.</p> <p>3 Q. Okay. Well, we'll start here with the new</p> <p>4 products. As a percent of total sales the cost -- this</p> <p>5 is your chart, right?</p> <p>6 A. Yes.</p> <p>7 Q. It goes up 10 percent. That means it's 10</p> <p>8 percent more expensive to sell those goods, isn't that</p> <p>9 right?</p> <p>10 A. Well, if you look at the total sales in 2020</p> <p>11 it's 355 million, and then the total sales in '21 are</p> <p>12 531 million.</p> <p>13 Q. I'm just talking about this one little sliver</p> <p>14 with his new products.</p> <p>15 A. Okay.</p> <p>16 Q. The costs of goods sold increased -- the</p> <p>17 numbers are right there. The cost of goods sold</p> <p>18 increased from 2020 to 2021 by 10 percent, right?</p> <p>19 A. Yes. I mean -- yes, yes.</p> <p>20 Q. I understand that you believe they're minimal</p> <p>21 compared to My Pillow's total cost of goods sold, but</p> <p>22 as we established, you don't have any idea of what his</p> <p>23 margins were in 2020 versus 2021, correct?</p> <p>24 A. Well, you're missing a point. What I'm</p> <p>25 rebutting here with Mr. Growsky is he said that sales</p> | <p style="text-align: right;">Page 55</p> <p>1 A. On the rebuttal report or the main report?</p> <p>2 Q. I think it was the main report.</p> <p>3 A. Okay. Let me know.</p> <p>4 Q. Actually, look at your rebuttal report and</p> <p>5 let me just clarify that this is what --</p> <p>6 (Reporter clarification.)</p> <p>7 Q. No worries. Let's look at schedule three,</p> <p>8 page 73 of the rebuttal report.</p> <p>9 A. Okay. I am here.</p> <p>10 Q. Are these -- is this your evidence of why</p> <p>11 Mr. Lindell's contracts or why he was canceled?</p> <p>12 A. So Mr. Growsky provided no evidence that what</p> <p>13 Mr. Lindell said caused retailers to cancel, okay? So</p> <p>14 I've been up against experts in the past that have</p> <p>15 opinions that are not based on any evidence, so that's</p> <p>16 where we're at today. So because he provided no</p> <p>17 evidence that retailers canceled because of what</p> <p>18 Mr. Lindell said I did my own investigation and I found</p> <p>19 these six retailers canceled with My Pillow for other</p> <p>20 reasons other than what Mr. Lindell said.</p> <p>21 Q. You just picked articles off of the web that</p> <p>22 said these things, isn't that correct?</p> <p>23 A. I wouldn't say I just picked them. I did the</p> <p>24 research. I looked to see why Walmart stores canceled.</p> <p>25 Again, since I received no evidence, no facts</p> |
| <p style="text-align: right;">Page 54</p> <p>1 have gone up in '21 because of new products without</p> <p>2 providing any evidence, okay?</p> <p>3 Q. He didn't say just new products. Didn't he</p> <p>4 also say shipping costs, manufacturing costs, and</p> <p>5 inflation? Didn't he add those in?</p> <p>6 A. Well, in this portion of his report he's</p> <p>7 talking about these new products, yeah, combined with</p> <p>8 other things. So what figure one is doing is just</p> <p>9 looking at, well, what percent of new sales are in '21?</p> <p>10 And as I said, it's only, you know, 2 to 3 percent.</p> <p>11 Q. Right.</p> <p>12 A. And the main point is, you know, Mr. Growsky</p> <p>13 is stating that because of what Mr. Lindell said about</p> <p>14 the election that sales have gone down and -- without</p> <p>15 any evidence.</p> <p>16 Q. Well, any evidence that you've seen?</p> <p>17 A. I have not seen any evidence, but he didn't</p> <p>18 provide any. He's the expert here, so I would expect</p> <p>19 an expert of any caliber to provide evidence, you know,</p> <p>20 to support opinions. Everything we're talking about</p> <p>21 has nothing to do with what Mr. Lindell said.</p> <p>22 Q. Okay. Let's go back to the section of your</p> <p>23 report where you talk about why Mr. Lindell was</p> <p>24 canceled. Give me one moment and I'll direct you</p> <p>25 there.</p> | <p style="text-align: right;">Page 56</p> <p>1 supporting Mr. Growsky's opinion, yes, I went online.</p> <p>2 I did this research, and this is what I found out.</p> <p>3 Q. Why didn't you call Walmart and ask them</p> <p>4 directly?</p> <p>5 A. Obviously that's not appropriate in a case</p> <p>6 like this.</p> <p>7 Q. Why not?</p> <p>8 A. Walmart isn't going to just start talking to</p> <p>9 me about this. This is litigation. I mean, even if I</p> <p>10 was valuing something outside of the context of</p> <p>11 litigation somebody at Walmart isn't going to disclose</p> <p>12 that information.</p> <p>13 Q. You could have asked the attorneys to get</p> <p>14 that information, couldn't you?</p> <p>15 A. I found it right here, you know, just as</p> <p>16 Mr. Growsky didn't call. He has no evidence. He has</p> <p>17 no internet research. He didn't make any telephone</p> <p>18 calls. He didn't ask counsel to get information for</p> <p>19 him. So I took it a step further and I provide this</p> <p>20 evidence.</p> <p>21 Q. You understand it's not his burden to produce</p> <p>22 evidence in this case?</p> <p>23 MS. LEVINE-PATTON: Objection. Requests or</p> <p>24 requires a legal opinion.</p> <p>25 A. I mean, replace burden with another word and</p> |

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| <p style="text-align: right;">Page 57</p> <p>1 maybe I can answer.</p> <p>2 Q. Smartmatic is the entity that's going forward</p> <p>3 against him, are they not?</p> <p>4 A. Yes, but as an expert witness if you're going</p> <p>5 to have an opinion that because of what Mr. Lindell</p> <p>6 said about the elections the retailers canceled, you</p> <p>7 need to support that with some facts. And that is an</p> <p>8 expert's responsibility to base their opinions on</p> <p>9 facts.</p> <p>10 Q. Well, don't you find it kind of odd that all</p> <p>11 these retailers are canceling him in the beginning of</p> <p>12 January 2021 when he makes his statements about the</p> <p>13 voting machines?</p> <p>14 A. These retailers canceled for other reasons</p> <p>15 other than what Mr. Lindell said, and if you look at</p> <p>16 the schedule at the end of my report you have retailers</p> <p>17 that canceled way before what Mr. Lindell has said.</p> <p>18 Q. How many canceled way before?</p> <p>19 A. I'm scrolling to page 72, schedule 2B as in</p> <p>20 boy like I referred to earlier. You have Ollie's that</p> <p>21 actually started brand new with My Pillow in 2022. You</p> <p>22 have Albertsons that stopped in 2020. You have Rural</p> <p>23 King that started in 2022. Telebrands stopped in 2018,</p> <p>24 and Telebrands was 10 percent of their total sales.</p> <p>25 So --</p> | <p style="text-align: right;">Page 59</p> <p>1 Q. How many browsers do I have on my computer?</p> <p>2 A. I don't know, but listen. There's a process</p> <p>3 you have to go through so you don't have biased search</p> <p>4 results. If you don't clear your cache, if you don't</p> <p>5 log out of your accounts, log out of Google, you're</p> <p>6 going to have biased search results that are based on</p> <p>7 your previous searches.</p> <p>8 Q. Right. So if I used a browser that was fresh</p> <p>9 and had everything cleared you would expect me not to</p> <p>10 get the same results, is that fair to say?</p> <p>11 A. It's quite possible. But the quotes that I'm</p> <p>12 telling you here are -- have nothing to do with</p> <p>13 Lindell's election comments.</p> <p>14 Q. Well, I'm reading these quotes and in all of</p> <p>15 these articles, like The Hill for instance, it says</p> <p>16 that Walmart said it pulled My Pillow products from its</p> <p>17 stores as Mr. Lindell continues to falsely claim the</p> <p>18 election was stolen.</p> <p>19 MS. LEVINE-PATTON: I'm sorry. I'm going to</p> <p>20 object. If you're reading from a document it should be</p> <p>21 introduced into evidence so that we can all see it and</p> <p>22 read the document together.</p> <p>23 MR. KACHOUROFF: Yeah. I'll go ahead and do</p> <p>24 that. I was hoping I wouldn't have to but I'll do it.</p> <p>25 I'm going to drop this article in the chat. Do you see</p> |
| <p style="text-align: right;">Page 58</p> <p>1 Q. And why do you suppose they stopped in 2018</p> <p>2 and 2020?</p> <p>3 A. I don't have the details as to why they</p> <p>4 stopped.</p> <p>5 Q. And you didn't feel that that was important</p> <p>6 to learn possibly why they stopped back then?</p> <p>7 A. Again, I'm a rebuttal expert. Mr. Growsky</p> <p>8 didn't thoroughly analyze and back up his opinions.</p> <p>9 Listen. I pulled my internet research. I found</p> <p>10 reasons why retailers dropped My Pillow, and it has</p> <p>11 nothing to do with what Mr. Lindell said.</p> <p>12 Q. So if I go into my Google and I type in My</p> <p>13 Pillow canceled by retailers the first one that comes</p> <p>14 up is Walmart pulls My Pillow products from stores.</p> <p>15 A. I mean, again, I could give you a lesson. I</p> <p>16 asked you earlier if you cleared your cache. Obviously</p> <p>17 you have not.</p> <p>18 Q. Oh, I have.</p> <p>19 A. It's not you have. You have to do it the</p> <p>20 second --</p> <p>21 Q. Every time. That's right.</p> <p>22 A. You didn't do it right now.</p> <p>23 Q. How do you know?</p> <p>24 A. Because you were just typing this in, weren't</p> <p>25 you?</p> | <p style="text-align: right;">Page 60</p> <p>1 that?</p> <p>2 THE WITNESS: One second, please.</p> <p>3 MS. LEVINE-PATTON: Is this Exhibit 713?</p> <p>4 MR. KACHOUROFF: Yes, ma'am.</p> <p>5 MS. LEVINE-PATTON: Thank you.</p> <p>6 (Whereupon, Exhibit 713, The Hill Article,</p> <p>7 was marked for identification.)</p> <p>8 A. Okay. I have it open.</p> <p>9 Q. And look down below where it's -- let's go</p> <p>10 down as you read it. Why don't you take a moment and</p> <p>11 go ahead and read it?</p> <p>12 A. Now, I have to admit that -- now, is this</p> <p>13 Growsky that I'm rebutting or is this Bowes that I'm</p> <p>14 rebutting or is this, you know, Christopher I'm</p> <p>15 rebutting? I mean, I've never had an attorney on the</p> <p>16 fly do this kind of analysis.</p> <p>17 (Reporter clarification.)</p> <p>18 A. Yeah. I'm just quite surprised that, you</p> <p>19 know, your own expert didn't take the time to provide</p> <p>20 facts to, you know, form their opinions, and now we're</p> <p>21 doing this on the fly, but I'm fine. Let me read this.</p> <p>22 These are Lindell's opinions. These are not factual.</p> <p>23 Q. Lindell says -- it says in the article here,</p> <p>24 you guys are canceling us just like other box stores,</p> <p>25 Lindell said he had told a Walmart executive. Shame on</p> |

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| <p style="text-align: right;">Page 61</p> <p>1 you, Walmart. You're disgusting.</p> <p>2 Do you think he was lying when he said that?</p> <p>3 A. You guys are canceling us just like other box</p> <p>4 stores, Lindell said he told the Walmart executive.</p> <p>5 Shame on you, Walmart. You're disgusting.</p> <p>6 If you need factual evidence to support an</p> <p>7 opinion that Mr. Lindell was canceled at retail because</p> <p>8 of his statements you need to rely on a statement from</p> <p>9 Walmart.</p> <p>10 Q. Where is your statement from Walmart?</p> <p>11 A. I provide evidence that it's not the case.</p> <p>12 That's not my opinion that Lindell was canceled by</p> <p>13 these retailers because of what he said about the</p> <p>14 election. That's Growsky's opinion. That's Bowes's</p> <p>15 opinion, and it appears to be your opinion. It's not</p> <p>16 mine.</p> <p>17 Q. I just want to know what you consider to</p> <p>18 be --</p> <p>19 (Reporter clarification.)</p> <p>20 Q. I just want to know what you consider to be</p> <p>21 evidence, and it appears that Business Insider is a</p> <p>22 piece of evidence for you. You'll accept that as</p> <p>23 evidence?</p> <p>24 MS. LEVINE-PATTON: I'm sorry. I'm going to</p> <p>25 object. This is argumentative. Is there a question?</p> | <p style="text-align: right;">Page 63</p> <p>1 A. Well, I cannot rely on what the defendant</p> <p>2 says. You have to find out something, you know, other</p> <p>3 than him. That's why -- you know, that's why an expert</p> <p>4 relies on other pieces of media like I did. So you're</p> <p>5 bringing up the Business Insider. If you go back to my</p> <p>6 schedule three on page 73, Bed Bath & Beyond, according</p> <p>7 to Business Insider Bed Bath & Beyond said it's getting</p> <p>8 rid of the pillow brand because it's not selling well.</p> <p>9 Q. You're quoting an article, a newspaper</p> <p>10 article essentially about why something was canceled</p> <p>11 and you consider that to be evidence?</p> <p>12 A. Well, you just brought up a Business Insider</p> <p>13 article and then you were telling me that I don't trust</p> <p>14 Business Insider.</p> <p>15 Q. No, no. I'm sorry. You're mistaken. You're</p> <p>16 the one who brought up Business Insider. It's right</p> <p>17 here in your schedule --</p> <p>18 A. Yes.</p> <p>19 Q. -- both times. You're the one who relies on</p> <p>20 Business Insider for evidence.</p> <p>21 MS. LEVINE-PATTON: I'm sorry. Is there a</p> <p>22 question? Again I'm going to object to argumentative.</p> <p>23 MR. KACHOUROFF: Yes.</p> <p>24 MS. LEVINE-PATTON: And I will cut this off</p> <p>25 with one more question and answer to take a break.</p> |
| <p style="text-align: right;">Page 62</p> <p>1 And I also think we should take a break soon. So you</p> <p>2 can answer this question and then we're going to take a</p> <p>3 break.</p> <p>4 MR. KACHOUROFF: If you'll permit me, I'm</p> <p>5 basically done. I just want to get an answer to the</p> <p>6 question.</p> <p>7 THE WITNESS: What is your question?</p> <p>8 MR. KACHOUROFF: Madam Reporter, would you</p> <p>9 please read it back?</p> <p>10 (Pending question read.)</p> <p>11 MS. LEVINE-PATTON: I'm going to object to</p> <p>12 form.</p> <p>13 MR. KACHOUROFF: I'll rephrase it.</p> <p>14 Q. You keep saying you want evidence, correct?</p> <p>15 A. I keep saying that Growsky provided no</p> <p>16 evidence, and I did provide evidence.</p> <p>17 Q. Your evidence are newspaper articles</p> <p>18 essentially?</p> <p>19 A. Okay. Yes.</p> <p>20 Q. And you selected those newspaper articles</p> <p>21 online?</p> <p>22 A. I -- yes. I did my investigation and this is</p> <p>23 what came up.</p> <p>24 Q. You excluded Mr. Lindell's statements about</p> <p>25 why he was canceled?</p> | <p style="text-align: right;">Page 64</p> <p>1 MR. KACHOUROFF: Okay.</p> <p>2 Q. You rely on Business Insider, do you not, as</p> <p>3 evidence?</p> <p>4 A. Because Mr. Growsky provided no evidence I</p> <p>5 did an internet search, and yes, I relied on Business</p> <p>6 Insider here. I want independent evidence, and that's</p> <p>7 what these articles are providing.</p> <p>8 MR. KACHOUROFF: We can take a break and</p> <p>9 I'll -- I may be done.</p> <p>10 THE VIDEOGRAPHER: Off the record at 11:34</p> <p>11 a.m. Pacific Time.</p> <p>12 (Whereupon, a recess was taken.)</p> <p>13 THE VIDEOGRAPHER: On the record at 11:40</p> <p>14 a.m. Pacific Time.</p> <p>15 BY MR. KACHOUROFF:</p> <p>16 Q. Okay. I'm going to upload one more document</p> <p>17 to the chat, and we'll call this -- I forget the</p> <p>18 exhibit. Are we up to 713?</p> <p>19 MS. LEVINE-PATTON: 714.</p> <p>20 MR. KACHOUROFF: 714. Okay.</p> <p>21 (Whereupon, Exhibit 714, NBC News Article,</p> <p>22 was marked for identification.)</p> <p>23 MR. KACHOUROFF: I just want you to take a</p> <p>24 moment -- this is another article off of NBC News.</p> <p>25 (Reporter clarification.)</p> |

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| <p style="text-align: right;">Page 65</p> <p>1 THE WITNESS: One second, please. I was just</p> <p>2 going to look at this. Okay. I read it.</p> <p>3 Q. Is it fair to say that the timing of the</p> <p>4 cancellation coincides with his campaign against the</p> <p>5 machines?</p> <p>6 A. I'm going to have to say that this again --</p> <p>7 this is the retailers telling us why they canceled, and</p> <p>8 the reason has nothing to do with what Lindell is</p> <p>9 saying.</p> <p>10 Q. Help me out. Retailers are in business to do</p> <p>11 what?</p> <p>12 A. Sell.</p> <p>13 Q. And make money, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And they don't want contentions or</p> <p>16 contentious atmospheres around their products, is that</p> <p>17 fair to say?</p> <p>18 A. I -- that is possible.</p> <p>19 Q. You don't expect retailers to take political</p> <p>20 sides?</p> <p>21 A. Well, listen. I have not -- I don't know</p> <p>22 what retail -- I know retailers want to sell products.</p> <p>23 I know they want to make money.</p> <p>24 Q. They don't want to alienate Republicans or</p> <p>25 Democrats, is that fair to say?</p> | <p style="text-align: right;">Page 67</p> <p>1 Q. That's what is stated to the public because</p> <p>2 they don't want to alienate Republicans, isn't that</p> <p>3 fair to say?</p> <p>4 A. I'm not reading any minds here. I'm reading</p> <p>5 what this article is saying.</p> <p>6 Q. Correct. I understand that. But it's</p> <p>7 possible that the retailer is not telling you -- not</p> <p>8 giving you the actual answer. They're looking for an</p> <p>9 excuse to cancel, isn't that true?</p> <p>10 A. I'm looking at -- a Bed Bath & Beyond</p> <p>11 spokesperson said, we stopped selling, you know -- it</p> <p>12 was in the company's economic interest. It says</p> <p>13 nothing about what Lindell is saying.</p> <p>14 Q. Sure. But if I'm a company that -- where I</p> <p>15 feel that Democrat dollars and Republican dollars are</p> <p>16 worth the exact same amount and I don't want to</p> <p>17 alienate either side I'm going to look for a neutral</p> <p>18 excuse, isn't that fair to say?</p> <p>19 MS. LEVINE-PATTON: Objection. Speculation.</p> <p>20 Object to form.</p> <p>21 A. Yeah. I'm not basing my opinions on</p> <p>22 speculation. I'll base my opinions on this article</p> <p>23 that you just brought up where it clearly says why the</p> <p>24 retailers are dropping.</p> <p>25 Q. You're speculating that that's the real</p> |
| <p style="text-align: right;">Page 66</p> <p>1 A. I don't know.</p> <p>2 Q. You can't even take a reasonable guess as to</p> <p>3 whether they want to alienate Democrats or Republicans?</p> <p>4 A. I don't want to guess, but I know there are</p> <p>5 some companies that lean one way more than the other,</p> <p>6 so I think it's quite possible that there could be a</p> <p>7 company out there that doesn't want Democrats to buy</p> <p>8 anything and another company that doesn't want</p> <p>9 Republicans to buy anything. But I don't have any</p> <p>10 opinions on that.</p> <p>11 Q. It's fair to say that a retailer that is</p> <p>12 looking at the global economic picture and not taking</p> <p>13 political sides would not necessarily want to alienate</p> <p>14 Democrats or Republicans when it cancels a product?</p> <p>15 MS. LEVINE-PATTON: Object to form.</p> <p>16 Speculation.</p> <p>17 A. Listen. All I'm looking for and what I was</p> <p>18 looking for from Growsky was some facts that supported</p> <p>19 his opinion that retailers dropped him because of what</p> <p>20 he's saying about politics, and he didn't provide any.</p> <p>21 So I brought up some articles that clearly stated what</p> <p>22 each retailer said, and now you're bringing up an</p> <p>23 article here that supports my opinion that these</p> <p>24 retailers are clearly stating they're not dropping My</p> <p>25 Pillow products because of what Mr. Lindell said.</p> | <p style="text-align: right;">Page 68</p> <p>1 answer?</p> <p>2 MS. LEVINE-PATTON: Objection.</p> <p>3 Argumentative. Asked and answered. Can we move on,</p> <p>4 Chris?</p> <p>5 Q. Yeah. You can answer the question.</p> <p>6 A. I am taking this article like I took my</p> <p>7 articles in my report on schedule three, page 73 as</p> <p>8 evidence that retailers are dropping My Pillow for</p> <p>9 other reasons than what Lindell is saying about the</p> <p>10 election.</p> <p>11 Q. Your last topic we'll talk about is the</p> <p>12 relief from pay-per-click. When did you create that?</p> <p>13 A. I first used that -- I don't know the exact</p> <p>14 date. 10 years ago.</p> <p>15 Q. And have you ever used it in a lawsuit?</p> <p>16 A. Yes.</p> <p>17 Q. Which lawsuits?</p> <p>18 A. That I cannot tell you because of protective</p> <p>19 orders.</p> <p>20 Q. Have you ever testified in front of a jury</p> <p>21 using the request for pay-per-click analysis?</p> <p>22 A. No.</p> <p>23 Q. But you can't tell me -- you don't know the</p> <p>24 cases that you used it in?</p> <p>25 A. I could look them up but I'm under a</p> |

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| <p style="text-align: right;">Page 69</p> <p>1 protective order. I cannot share that with you.</p> <p>2 Q. Not even the case name?</p> <p>3 A. No.</p> <p>4 Q. Was it a state case or a federal case?</p> <p>5 A. I don't know.</p> <p>6 Q. How many cases?</p> <p>7 A. I don't recall.</p> <p>8 Q. Who has reviewed this methodology of the</p> <p>9 relief from pay-per-click?</p> <p>10 A. This is in a peer-reviewed book as a book</p> <p>11 chapter published by Business Valuation Resources. The</p> <p>12 title is Guide to Economic Damages. So it is</p> <p>13 peer-reviewed and published in a book chapter and used</p> <p>14 in many valuation assignments as well as litigation</p> <p>15 assignments.</p> <p>16 Q. Who is the, quote, peer for this method?</p> <p>17 A. Business Valuation Resources has a peer</p> <p>18 review team. I don't know the individuals' names.</p> <p>19 Q. Who is Business Valuation Resources?</p> <p>20 A. BVR. It is an organization that supports the</p> <p>21 business of valuation and calculating economic damages.</p> <p>22 Q. Did you have to pay to get your method peer</p> <p>23 reviewed?</p> <p>24 A. No.</p> <p>25 Q. Did you submit an article to them to have it</p> | <p style="text-align: right;">Page 71</p> <p>1 Mr. Walsh, sir?</p> <p>2 MR. WALSH: Maura can speak for me. Thank</p> <p>3 you.</p> <p>4 MS. LEVINE-PATTON: Yeah.</p> <p>5 THE VIDEOGRAPHER: This concludes today's</p> <p>6 deposition of Doug Bania. We're off the video record</p> <p>7 at 11:50 a.m. Pacific Time on August 9, 2024.</p> <p>8 (Off the record at 11:50 a.m.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |
| <p style="text-align: right;">Page 70</p> <p>1 peer reviewed?</p> <p>2 A. I believe if my memory serves me that I was</p> <p>3 invited to speak at one of their conferences, and based</p> <p>4 on that presentation I was asked to write a book</p> <p>5 chapter.</p> <p>6 Q. And so that -- your chapter is -- what's the</p> <p>7 name of the chapter you wrote, if you don't mind me</p> <p>8 asking?</p> <p>9 A. I would have to look at my CV. It should be</p> <p>10 on there.</p> <p>11 Q. Okay. I'll look for it. Well, that's all I</p> <p>12 have. I appreciate the time, Mr. Bania. I know it's a</p> <p>13 little contentious at times but it's my nature.</p> <p>14 A. Not a problem. Thank you.</p> <p>15 MR. KACHOUROFF: Thank you, Maura, as well,</p> <p>16 and thank you, Kaylee.</p> <p>17 COURT REPORTER: All right. No problem. We</p> <p>18 can go off the record.</p> <p>19 THE VIDEOGRAPHER: Counsel, before I conclude</p> <p>20 the video deposition I do need to ask if anyone needs a</p> <p>21 copy of the video.</p> <p>22 MR. KACHOUROFF: Yes, please.</p> <p>23 MS. LEVINE-PATTON: Yes. I believe we have a</p> <p>24 standing order.</p> <p>25 THE VIDEOGRAPHER: Thank you, ma'am.</p> | <p style="text-align: right;">Page 72</p> <p>1 Declaration Under Penalty of Perjury</p> <p>2</p> <p>3 I, DOUG BANIA, declare under penalty of</p> <p>4 perjury under the laws of the State of California that</p> <p>5 the foregoing is true and correct; that I have read my</p> <p>6 deposition and have made the necessary corrections,</p> <p>7 additions, or changes to my answers that I deem</p> <p>8 necessary.</p> <p>9 Executed on this _____ day of</p> <p>10 _____, 2024.</p> <p>11</p> <p>12</p> <p>13</p> <p>14 _____</p> <p>15 DOUG BANIA</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |

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1 : : : CERTIFICATE OF REPORTER : : :
 2
 3 I, Kaylee G. Wood, a Certified Shorthand
 Reporter, holding a valid and current license issued by
 4 the State of California, No. 14348, duly authorized to
 administer oaths, do hereby certify:
 5 That the witness in the foregoing deposition
 was administered an oath to testify to the whole truth
 6 in the within-entitled cause;
 That said deposition was taking down by me in
 7 shorthand at the time and place therein stated and
 thereafter transcribed into typewriting, by computer,
 8 under my direction and supervision.
 9 (X) Reading and signing was requested.
 10 () Reading and signing was waived.
 11 () Reading and signing was not requested.
 12 Should the signature of the witness not be
 affixed to the deposition, the witness shall not have
 13 availed himself/herself of the opportunity to sign or
 the signature has been waived.
 14 I further certify that I am neither counsel
 for nor related to any party in the foregoing
 15 depositions and caption named nor in any way interested
 in the outcome thereof.
 16
 17
 18 Dated: This 12th day of August, 2024
 19 at San Diego, California.
 20
 21
 22
 23 KAYLEE G. WOOD
 24 CSR NO. 14348
 25

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1 CORRECTION CERTIFICATE
 2 To add testimony, indicate "Add" and print the exact
 words you wish to add. To delete testimony, indicate
 3 "Delete" and print the exact words you wish to delete.
 4
 5 Deposition of: DOUG BANIA
 Proceedings Date: August 9, 2024
 6
 7 I, DOUG BANIA,
 have the following changes to my proceedings
 8 transcript:
 9 PAGE LINE CHANGE TESTIMONY TO READ AS FOLLOWS:
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
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 21 _____
 22 _____
 23
 24 _____ Date _____
 25 DOUG BANIA